

**Letter of Findings: 42-20190731P
International Fuel Tax Agreement
For the Year 2015**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Business was able to provide sufficient documentation and analysis to establish that waiver of penalty is warranted. Therefore, the Department will issue new billing statements reflecting that the penalty has been waived.

ISSUE

I. International Fuel Tax Agreement-Fuel Tax Assessment.

Authority: IC § 6-8.1-10-2.1; IC § 6-8.1-5-1; IC § 6-6-4.1-14; IC § 6-8.1-5-4; [45 IAC 15-11-2](#); IFTA Articles of Agreement § R1210.300 (2013); IFTA Articles of Agreement, § R1220.100 (2013); IFTA Procedures Manual § P550 (2013); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the imposition of a penalty.

STATEMENT OF FACTS

Taxpayer is a motor carrier based in Indiana. The Indiana Department of Revenue ("Department") conducted an audit that resulted in the assessment of International Fuel Tax Agreement ("IFTA") taxes plus penalty and interest for 2015.

Taxpayer disagreed with the assessment of penalty and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's attorney explained the basis for the protest. This Letter of Findings results. Further facts will be supplied as necessary.

DISCUSSION

The Department conducted an IFTA audit and determined that Taxpayer owed additional IFTA taxes plus a penalty and interest. The Department's audit concluded that Taxpayer was unable to provide the complete necessary records to verify the IFTA returns it filed for 2015. As a result of this finding, the Department assessed a tax amount based upon the best information available to the Department during the audit and in accordance with IFTA. Taxpayer is currently paying the outstanding assessed tax to the Department through a payment plan. Taxpayer protests the Department's penalty imposed on the results of the IFTA audit.

As a threshold issue, it is Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "[T]he notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing . . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

The Department first refers to IC § 6-6-4.1-14, which states:

- (a) The commissioner or, with the commissioner's approval, the reciprocity commission created by [IC 9-28-4](#) may enter into and become a member of the International Fuel Tax Agreement or other reciprocal agreements with the appropriate official or officials from any other state or jurisdiction under which all or any part of the requirements of the Indiana Administrative Code are waived with respect to motor carriers that use in Indiana motor fuel upon which tax has been paid to the other state or jurisdiction. An agreement may be made under this subsection only with a state or jurisdiction that grants equivalent privileges with respect to motor fuel consumed in the other state or jurisdiction and on which a tax has been paid to this state.
- (b) The commissioner or, with the commissioner's approval, the reciprocity commission created by [IC 9-28-4](#) may enter into the International Registration Plan, the International Fuel Tax Agreement, or other reciprocal agreements with the appropriate official or officials of any other state or jurisdiction to exempt commercial motor vehicles licensed in the other state or jurisdiction from any of the requirements that would otherwise be imposed by this chapter, including the requirements for trip permits, temporary authorizations, repair and maintenance permits, and annual permits and the payment of fees for permits and authorizations. An agreement may be made under this subsection only with a state or jurisdiction that grants equivalent exemptions to motor vehicles licensed in Indiana.

IC § 6-8.1-5-4 states:

- (a) Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records referred to in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.
- (b) A person must retain the books and records described in subsection (a), and any state or federal tax return that the person has filed:
- (1) for an unlimited period, if the person fails to file a return or receives notice from the department that the person has filed a suspected fraudulent return, or an unsigned or substantially blank return; or
 - (2) in all other cases, for a period of at least three (3) years after the date the final payment of the particular tax liability was due, unless after an audit, the department consents to earlier destruction.
- In addition, if the limitation on assessments provided in section 2 of this chapter is extended beyond three (3) years for a particular tax liability, the person must retain the books and records until the assessment period is over.
- (c) A person must allow inspection of the books and records and returns by the department or its authorized agents at all reasonable times.
- (d) A person must, on request by the department, furnish a copy of any federal returns that he has filed.

Pursuant to IC § 6-8.1-10-2.1(a), the Department may assess a ten (10) percent negligence penalty if Taxpayer:

- (1) fails to file a return for any of the listed taxes;
- (2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;
- (3) incurs, upon examination by the department, a deficiency that is due to negligence;
- (4) fails to timely remit any tax held in trust for the state; or
- (5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department[.]

The Department may waive a negligence penalty as provided in [45 IAC 15-11-2\(c\)](#), as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice,

etc.;

(5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

IFTA Articles of Agreement, § R1210.300 (2013) provides the standard for determining whether a proposed assessment may successfully be challenged by Taxpayer. "The assessment made by a base jurisdiction pursuant to this procedure shall be presumed to be correct and, in any case where the validity of the assessment is questioned, the burden shall be on the licensee to establish by a fair preponderance of evidence that the assessment is erroneous or excessive." *Id.*

IFTA Articles of Agreement, § R1220.100 (2013) states:

The base jurisdiction may assess the licensee a penalty of \$50.00 or 10 percent of delinquent taxes, whichever is greater, for failing to file a tax return, filing a late tax return, underpaying taxes due.

The IFTA Procedures Manual at § P550 (2013) provides that:

- .100 The licensee must maintain complete records of all motor fuel purchased, received, and used in the conduct of its business.
- .200 Separate totals must be compiled for each motor fuel type.
- .300 Retail fuel purchases and bulk fuel purchases are to be accounted for separately.
- .400 The fuel records shall contain, but not be limited to:
 - .005 The date of each receipt of fuel;
 - .010 The name and address of the person from whom purchased or received;
 - .015 The number of gallons or liters received;
 - .020 The type of fuel; and
 - .025 The vehicle or equipment into which the fuel was placed.

The Department's audit noted that Taxpayer's mileage was inadequately reported. Taxpayer relied on a mileage tracker in reporting mileage that truncated the reported miles; that is, while the tracker recorded origin to destination mileage, the tracker recorded fractional miles but not to the specificity required under IFTA. Taxpayer became aware of this recordkeeping deficiency through the Department's audit. Since the audit, Taxpayer has acknowledged the recordkeeping deficiency and has switched tracking providers in order to record mileage to the Department's and IFTA's required degree of specificity. Taxpayer does not protest the imposition of IFTA base tax or interest.

Taxpayer protests the Department's position that Taxpayer's reporting discrepancies were indicative of negligence. Reasonable cause is a fact sensitive question and thus must be dealt with according to the particular facts and circumstances of each case. After review of this case, the Department concludes that Taxpayer's conduct was the result of reasonable reliance on deficient tracking and did not rise to the level of negligence provided in [45 IAC 15-11-2](#). Moreover, as stated above, Taxpayer has acknowledged its deficient recordkeeping and has taken action to correct its mileage recordkeeping. Based on these reasons, the Department will waive the assessed penalty. The Department would finally note that Taxpayer is on constructive notice that a waiver may not be warranted if a similar issue transpires again.

FINDING

Taxpayer's protest is sustained.

August 19, 2019

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